

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re EMMA C., a Person
Coming Under the Juvenile
Court Law.

B268574

(Los Angeles County
Super. Ct. No. DK07188)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

EMMA C.,

Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Teresa T. Sullivan, Judge. Reversed.

Anne E. Fragasso, under appointment by the Court of
Appeal, for Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, Jessica S. Mitchell, Deputy County
Counsel, for Plaintiff and Respondent.

INTRODUCTION

Mother Karina N. (mother) and father Alexander C. (father) (collectively, parents) had two children, Ian N. and Emma C. After an incident that resulted in seven-month-old Ian sustaining a fractured leg, the Los Angeles County Department of Children and Family Services (DCFS) detained Ian and placed him in foster care, and parents began reunification services. Emma was born while Ian was still in foster care. DCFS detained Emma on the basis that because Ian suffered a serious injury at a young age, Emma was also at risk. The juvenile court found jurisdiction under Welfare and Institutions Code section 300, subdivisions (a) and (j).¹ Emma appealed.

We reverse.² Evidence of past abuse or neglect of a sibling, without any evidence that such abuse or neglect is likely to reoccur, and where parents made significant progress in and

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² DCFS notes that the court has terminated jurisdiction over Emma, and asks that we dismiss the appeal as moot. Even where a finding may otherwise be considered moot, we retain discretion to consider the merits of an appeal when the finding could potentially impact the current or future dependency proceedings or could have other consequences for the appellant beyond jurisdiction. (See *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1055; *In re M.W.* (2015) 238 Cal.App.4th 1444, 1452.) As this case makes abundantly clear, a finding of jurisdiction as to one child may impact future DCFS proceedings regarding the child, her siblings, and her parents. We therefore exercise our discretion to consider Emma's appeal.

were fully compliant with reunification services, is insufficient to sustain a finding of jurisdiction.

FACTUAL AND PROCEDURAL BACKGROUND

A. Background relating to Ian

Emma's brother Ian was born in January 2014. Events relating to Ian are not at issue in this appeal, but they are relevant to Emma's case, and therefore we recount the basic facts here to the extent they are reflected in the record.

In August 2014, mother and father took Ian to the hospital because his leg was inflamed and swollen. Father reported that earlier that day, Ian had been in bed sleeping and began to fall off the bed. Father grabbed Ian's leg to stop him from falling; father heard the leg pop, and Ian cried for a few seconds. Ian was diagnosed with an acute left femur fracture. Ian's medical records indicate that "father was very consistent in the account of the injury to multiple examiners" and "the type of fracture and timing of fracture is consistent with the history provided by the father." The notes by the examining doctor, Janet Arnold, M.D., state, "In my opinion, this fracture is most likely an accidental fracture that occurred in the manner described by the father."

The left femur fracture was not Ian's only diagnosis, however. Ian's x-rays also revealed a healing left proximal tibia fracture that likely occurred two to six weeks before Ian's visit to the hospital. The medical records note that it was "not the type of classic metaphyseal fracture that is highly correlated with non-accidental trauma." The records note that without knowing about the type of fracture, mother reported that about a month prior, Ian slid off the bed feet-first, landing on his extended legs. Mother said Ian did not seem to be in pain afterward, and therefore she did not seek medical attention for him. Dr. Arnold

noted, “[S]ince the fracture appearance is consistent with a compression fracture, and the timing of the event noted by the mother is consistent with the degree of healing, I think it is possible that the fracture occurred in the manner described by the mother.” The notes said that non-accidental trauma could not be ruled out, and “the child would have exhibited pain for at least a few days after the incident. It is concerning that the parents did not seek medical care for this injury.”

Ian also had a third issue that medical personnel found concerning. According to the medical records, “The injury that Ian demonstrated at the time of admission that is most worrying for non-accidental trauma is bruising of the neck and trunk.” Ian had bruises on both sides of his neck just under his jaw, a bruise at the top of his sternum, and a bruise on his right lower chest. Mother attributed these bruises to a five-year-old friend holding Ian “under the chin and around the back” and Ian pushing himself down in the bathtub. Mother also stated that Ian seemed to bruise easily, but medical tests did not indicate that Ian had any condition that would lead to unusual bruising. The medical records noted, “It is very unlikely that a child with no underlying medical condition predisposing to easy bruising would suffer substantial, repeated bruises by being held inexpertly by a 5 year old child, or by pushing himself into the porcelain tub. In the absence of an underlying medical condition, neck and trunk bruises in this age group are very likely to be the result of non-accidental trauma.”

Dr. Arnold’s notes also stated, “I would like to note that Ian’s mother . . . has been at bedside helping to care for Ian throughout the hospitalization, both day and night. She has been eager to answer questions and very cooperative throughout my

interactions with her.” The notes also said that father “was also very cooperative” and “has been spending many evenings at the hospital with Ian and [mother], but leaves to go to work during the day.”

DCFS was contacted about Ian’s injuries. The allegation of general neglect was substantiated under section 300, subdivisions (a), (b), and (e), and Ian was detained. Mother and father received reunification services.

B. Background relating to Emma

While Ian was still in foster care and parents were participating in reunification services, Emma was born in August 2015. On September 2, 2015, a DCFS social worker, Daisy Cruz,³ made an unannounced visit and observed parents at home with Emma. Parents told the social worker they had learned from their mistakes with Ian, and they were very attentive with Emma. They had obtained a bassinet for Emma, and told the social worker that they wanted to ensure they did not have any accidents, as they had when Ian fell off the bed. Daisy Cruz wrote in the report that she “observed mother and father to be attentive to Emma and help one another with Emma.” The social worker created a safety plan in which parents would be attentive to Emma, Emma would sleep only in the bassinet and not on the bed, and Ian’s caregiver would call every day and visit parents’ home to check on Emma’s well being. Parents agreed to this plan.

³ Because DCFS social worker Daisy Cruz and DCFS investigator/social worker Alicia Cruz share a surname, we will refer to each by both their first and last names.

On September 11, 2015, DCFS filed a juvenile dependency petition relation to Emma, alleging a risk of serious, non-accidental physical harm (§ 300, subd. (a)), failure to protect (§ 300, subd. (b)), and abuse of a sibling (§ 300, subd. (j)). The petition alleged that because Ian was found to have injuries consistent with non-accidental trauma, and he was a “current dependent of the Juvenile Court due to the mother and father’s deliberate, unreasonable, and neglectful acts,” Emma was “at risk of serious physical harm, damage, and danger.” The court ordered Emma detained, and she was placed in foster care. The court ordered mother and father to have monitored visits.

A DCFS jurisdiction/disposition dated report September 22 set forth Ian’s relevant history. When interviewed, both parents said they were upset that Emma had been taken away based only on Ian’s history, without evidence that Emma was at risk. Parents stated that they had unmonitored visits with Ian for five hours at a time, they all attended mommy-and-me classes together, and they had been to individual therapy. Father said that at the last hearing relating to Ian, parents had not yet completed all their requirements and therefore Ian was not allowed to come home. By the time of the interview, father said they each had completed 16 sessions of individual therapy. He said, “We have done everything that you have told us. We have participated in parenting classes and we have finished them. We also finished the individual therapy . . . and now we’re in Mommy and Me.”

When asked about what they learned about parenting in their classes, father said, “Before, we felt like he was a baby, so nothing would happen. We were sure nothing was going to go wrong. That nothing would happen to him while he was in the

bed. But now we are more conscious of that. That's why we have a crib. We learned how to be aware of safety issues. We knew about them before, but we learned more."

DCFS also interviewed the mommy-and-me educator, who said parents had been to two sessions with Ian so far. She said, "The parents are responsive. They participate 100%. Dad seems to be a little bit more involved than the mom. . . . So far I have no concerns." The educator also submitted a letter showing that parents had completed 2.5 hours of a "Parenting the Toddler Class for children ages 18 months to 36 months." DCFS also interviewed the pastor of parents' church, who said, "I have no concerns about them. I see them as very tranquil. Since the mother has had the new baby, I have observed her to be very conscious and attentive. I think they are good parents." Father's counselor submitted a letter stating that father had attended 16 counseling sessions, and that he was "consistent, never missed a session," and during therapy he "appeared engaged, and showed interest in learning about his son's needs and development." Mother's counselor also submitted a letter stating that she had completed 16 sessions, and that she "has gained significant insights and understanding into her own patterns of parenting and interacting in her life." Additional letters and certificates showed that both mother and father had completed parenting classes.

The DCFS report stated, "The parents appear to be attentive with the child and are taking the necessary steps to have the child back in their care." The report also stated, "The child's safety in the home with the parents is endangered by the parent's [*sic*] history of neglect of child's sibling Ian . . . , which consisted of non-accidental injuries." The report also stated,

“[T]here is no doubt that there is a risk to child Emma due to the extent and severity of what occurred with sibling Ian.” It added, “[H]er very young age places her at higher vulnerability as she is pre-verbal and requires constant care and supervision.” It continued, “At this time, the Department feels that additional time is needed to execute a proper plan, and make a reasonable decision and recommendation as to the child Emma.” DCFS requested a continuance, which the court granted.

In the last-minute report filed with the court October 2, 2015, DCFS investigator Alicia Cruz noted that she had spoken with mother’s and father’s therapists. Father’s therapist “reported that the father did meet his treatment goals. She indicated that the father provided adequate responses as they went through treatment. She noted that the fact that they covered and addressed a lot in their sessions was attributed to the father’s willingness to be open and honest, and his willingness to learn and ask a lot of questions.” Mother’s therapist reported that “a lot of what they discovered was that the mother previously had a Go with the flow. That’s Ok type of attitude.” The therapist worked with mother on “igniting her maternal instincts and not holding back,” and mother “totally got it.” The therapist said mother met her treatment goals and “indicated that he had no further concerns and did not feel mother needed additional therapy.”

The last-minute report also recounted a child and family team meeting that included mother, father, a maternal aunt, maternal grandparents, the family pastor, two family friends, and DCFS representatives. The report noted, “[T]he family described the parents as calm, peaceful, and incapable of deliberately hurting their children.” The maternal grandmother

and aunt were living with parents to provide support following the birth of Emma.

Notes relating to a DCFS staffing meeting stated, “It was noted that there was still a concern as to the severity of the prior allegations, and how medical records indicate Ian’s injuries were non-accidental. Also of concern was the sustained E count against the parents.”⁴ One social worker “expressed concern that the parents have not provided a plausible explanation as to how the child Ian sustained the injuries that were determined to be non-accidental.”

The recommendation in the last-minute report stated, “Although it is evident that the parents are cooperative, are participating in appropriate services, and are making progress in their treatment goals, the Department continues to have concerns with respect to the child Emma. Most notably, the Department continues to be concerned about the child Ian’s injuries, that these injuries were determined to be non-accidental, that a WIC 300 subdivision E count was sustained,

⁴ Section 300, subdivision (e) allows for jurisdiction where “[t]he child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, “severe physical abuse” means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; . . . or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food.” (§ 300, subd. (e).)

and that the parents have not provided a plausible explanation for these injuries. Thus, at this time, it is respectfully recommended that the child, Gladys [*sic*], be declared a dependent of the Juvenile Court under subdivision A, B, and J.” DCFS further recommended that Emma be removed from parents’ care and have monitored visitation, and that parents be ordered to participate in individual counseling and complete hands-on parenting classes.

C. Jurisdictional hearing

The court held a hearing on October 2 and 8, 2015. Father testified about how Ian was injured when he began falling off the bed and father grabbed him by the leg.⁵ At the time, Ian cried for ten or fifteen seconds. Father said he understood Ian’s injuries—the broken bones and bruising—to be the result of accidents. Father said he recognized that he could have been more careful with Ian to avoid those accidents. He testified that he had five-hour unmonitored visits with Ian.

Father testified that while she lived with them, Emma slept in her crib and ate well, and father helped care for her. Father said he would comply with any court order stating that Emma should not sleep in the bed. Father said his therapist told him that he did not need more counseling.

Mother also testified, and the questioning focused almost exclusively on Ian. Mother said she did not witness the accident in which father grabbed Ian’s leg because she was sleeping at the time, and she only woke up when Ian began to cry. Ian cried for less than a minute. Mother noticed bruising on Ian’s neck and

⁵ The court limited questioning about Ian’s accident to some extent based on objections pursuant to Evidence Code section 352.

trunk before she took him to the hospital for the broken leg, but she did not know how long before. She recognized that she could have helped prevent Ian's injuries by being "more careful of where he was playing, sleeping." Mother also testified that she and father had five-hour unmonitored visits with Ian. She had completed individual therapy and parenting classes, and was currently attending mommy-and-me classes.

Mother testified that they prepared for Emma's birth by providing everything she would need: "crib, car seat, stroller, bath, clothes, bottles" and many other things. Mother said the crib was important because they learned from their "past mistake" of "letting our son sleep on the bed."

DCFS investigator Alicia Cruz also testified. She had never observed parents interacting with either Ian or Emma. Alicia Cruz testified that she interviewed the parents, therapists, parenting class educator, pastor, and that she met parents' family members. She never discussed Ian's case with medical personnel. Alicia Cruz testified that none of the people she interviewed expressed concerns about parents' ability to care for Emma. When asked whether DCFS's recommendation as to Emma related to an allegation that father intended to hurt Ian, Alicia Cruz testified, "The department's position is that [Ian's case] was already sustained and that this was possibly non-accidental. And so the department believes, yes, there is a possibility." When asked for her own opinion, Alicia Cruz testified, "My opinion as a trained social worker is it is consistent with the department's opinion. If the medical records indicate it was non-accidental trauma, then I believe there was non-accidental trauma." She testified that Emma could not be placed back in parents' custody "[b]ecause of the severity of Ian's injuries

and because the parents have consistently indicated that this was an accident. Even in their testimony here they only indicate one incident that was an accident.” She added, “They haven’t – in the services they have already received – provided any plausible answer to what happened. So there is no indication that they have learned.”

On cross-examination, Alicia Cruz testified that father’s therapist “indicated that his story or his statements [about Ian’s injury] were consistent with what he reported to the department,” and the therapist did not have any concerns that father did not understand anything pertaining to treatment. Mother’s therapist also reported that he had no concerns. Both therapists said that parents were cooperative and open. Alicia Cruz testified that her interviews with the service providers and therapists did not cause her to be concerned about parents’ care for Emma. After interviewing the educator for the mommy-and-me class, Alicia Cruz also had no concerns about parents’ care for Ian. Counsel for mother asked Alicia Cruz about Ian’s medical records, and the court sustained an objection, stating, “We are not going through the evidentiary basis for the prior sustained petition.”

After DCFS rested, mother’s counsel made a motion under section 350, subdivision (c),⁶ arguing that DCFS failed to make a showing that Emma was at risk. The court denied the motion. Mother’s counsel wanted to call Daisy Cruz as a witness, but she was not available so the court continued the hearing.

⁶ Section 350, subdivision (c) allows the court to “order whatever action the law requires” if, after the close of the department’s presentation of evidence, the department has failed to meet its burden of proof.

When the hearing resumed on October 8, 2015, mother's counsel called Daisy Cruz as a witness. She testified that parents were fully compliant with their case plan, and parents' individual counselors did not have any concerns about either mother or father. Ian's caregiver reported to Daisy Cruz that with respect to the unmonitored visits with Ian, "the parents are appropriate, they are following the orders, she has no concerns during the visitation, and when Ian sees mother and father, he runs toward them, hugs them, kisses them, and when they leave, he starts crying. He wants to go with them." Daisy Cruz testified that parents went to Ian's medical appointments both with and without Ian's caregiver. She testified that parents had always been appropriate and had never given her any concern in their interactions with Ian. Daisy Cruz also testified that one of the children's aunts was willing to live with the family and support parents with respect to Emma.

Mother's counsel laid a foundation and had Daisy Cruz deemed an expert. Daisy Cruz then testified, "With the supportive family members as well as with family preservation in place, I believe the child can be properly placed in the home."

When questioned by counsel for Emma, Daisy Cruz testified that other than not yet completing all classes of the mommy-and-me course, parents were in compliance with all requirements with respect to Ian. Daisy Cruz also said Ian had not been granted overnight visits with parents because of the pending case regarding Emma. When she visited the family shortly after Emma was born, Daisy Cruz found their apartment to be clean and organized; parents had supplies for Emma, and Emma was up to date on medical care and immunizations. When asked how the department deemed Emma to be at risk in light of

the evidence that Emma was healthy and well cared for, Daisy Cruz testified, “Because of the sustained language with the child, the (e) count.” Daisy Cruz also testified, “Based on my observations with the parents, I have no concerns with Emma returning to mother and father.” All parties then rested.

Counsel for DCFS argued in closing that Ian’s “injuries were all in different stages of healing and were consistent with non-accidental trauma.” Counsel referred to a document that is not in the record on appeal, and said that Dr. Janet Arnold Clarke⁷ said that “two of the bruises together were suggestive of a bruise from a direct blow by a fisted hand.” Counsel also said that in her final evaluation of Ian, Dr. Arnold Clarke discounted mother’s explanations for the bruising and the older fracture in Ian’s leg, and found that Ian did not have a disorder that would cause him to bruise easily. Also, medical care was not sought for the earlier fracture, “which brings us to Emma. Emma is younger than Ian was at the time he sustained these multiple injuries.” She also argued that father “seemed recalcitrant and was extremely evasive in his answers. He does not believe he did anything wrong. He chalks up all Ian’s injuries to accidents.” She continued, “To date the parents have failed to present plausible explanations for the cause of Ian’s injuries and failed to truly accept responsibility for what occurred.” “This all poses a serious risk to Emma.”

Counsel for mother, father, and Emma each asked the court to dismiss the petition in its entirety. Counsel for father argued that there was no evidence that Emma was at risk; DCFS’s argument centered only on issues relating to Ian, and

⁷ The court later suggested that Dr. Arnold recently changed her name.

those issues had already been litigated. She noted that father was nervous when testifying in court, and argued, “While the department would suggest that father has something to hide or has not learned from his mistakes, the opinion of the caregiver, the father’s therapist, his service provider, father’s family and the community supporting this family, unanimously state to the contrary.”

Counsel for mother argued that DCFS “is trying to do a bait and switch here. They are baiting you with the sustained allegation by the prior court, but then they are switching the medical testimony for that allegation.” “The court did not sustain an allegation that said anybody punched this child twice.” He pointed out that the medical personnel said Ian’s injuries were “consistent with” non-accidental trauma, but “[t]hat’s not the same as being unique or specific” to non-accidental trauma. “Consistent” simply means that “nobody knew exactly what happened.” Mother’s counsel also argued that the therapists and service providers all determined that parents met their goals, and “[i]t’s kind of tough if the providers all think the parents met the goal, but then the D.I. [department investigator] gets to come in here and say, oh, they haven’t.” Counsel also noted, “The D.I. didn’t meet the parents and see them with either Ian or Emma.”

Counsel for Emma argued that DCFS’s evidence did not meet a preponderance of the evidence standard. She pointed out that even medical personnel working with Ian said parents were cooperative and engaged. Even if mother mistakenly believed that Ian bruised easily, there was no reason to believe that mother would fail to protect Ian or Emma once the doctor told mother that kind of bruising was not normal in an infant. She continued, “Throughout all of the reports in Ian’s case, the

department consistently comes back with the same information that the court has heard during testimony. Parents are attentive. Parents are in compliance. Parents have not missed a meeting, a program, a date, a time . . . they are doing everything that they could possibly do to make sure their child did not suffer any further injuries.” Emma’s counsel argued, “There’s no evidence today of risk of a newborn child or a child of a sibling who was adjudicated earlier. This court cannot take jurisdiction. . . . [T]he fact that a child was injured before is not enough for this court to sustain the petition regarding Emma.”

After a short recess, the court gave its ruling regarding jurisdiction. The court said, “The court did find that both mother and father’s testimony was credible but indicative of minimization and denial.” The court discussed Ian’s two fractures and bruising, and said Ian’s doctor “opined that these were all consistent with child abuse.” The court noted that the allegations had been sustained as to Ian, and said, “based on the three at least three [*sic*] separate distinguishable injuries with all different time frames of their healing, the court does have adequate evidence for a preponderance to sustain the (a) count based on the history of repeated infliction of injury on this child’s sibling.”

The court then said, “I do not find there is evidence to sustain the (b) count.” As for the (j) count, “the court does find that the lack of substantive progress that the parents demonstrate in their minimization coupled with the nature and severity of the injuries to the sibling, the court does find that the department has met its burden as to the (j) as well.”

The parties agreed to proceed to disposition. The court stated, “Emma is declared a dependent of the court under

Welfare & Institutions Code section 300(a) and (j); however, I don't find that the department has by clear and convincing evidence shown that there is a substantial risk of danger to this child if she is returned home." The court ordered Emma to be placed in parents' home, and for parents to comply with a case plan including hands-on parenting classes and individual counseling. Emma's aunt was required to live with parents to "keep an eye on Emma and make sure that there's no more misunderstandings about what has occurred in the home."

Emma timely appealed.

STANDARD OF REVIEW

Emma argues that there was no substantial evidence of a risk of harm to Emma, and therefore the petition should have been dismissed. "In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. "In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court." [Citation.] "We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] "[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate]." [Citation.]" [Citation.]" (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

“Substantial evidence does not mean any evidence; it must be “‘substantial’ proof of the essentials which the law requires.”” (*In re B.T.* (2011) 193 Cal.App.4th 685, 691.) “A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [Citation.] Furthermore, [w]hile substantial evidence may consist of inferences, such inferences must be “a product of logic and reason” and “must rest on the evidence” [citation]; inferences that are the result of mere speculation or conjecture cannot support a finding [citations].’ [Citation.] ‘The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.’ [Citation.]” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393-1394.)

DISCUSSION

The purpose of section 300 “is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm.” (§ 300.2.) Under section 300, subdivision (a), a court may exercise jurisdiction over a child when the “child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian. For purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on . . . a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm.” (§ 300, subd. (a).)

Under subdivision (j), the court may exercise jurisdiction when the “child’s sibling has been abused or neglected, as defined

in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.” (§ 300, subd. (j).)

“The basic question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.’ [Citation.]” (*In re A.S.* (2011) 202 Cal.App.4th 237, 244, emphasis added.) “A juvenile court need not wait until a child is seriously abused or injured before it takes jurisdiction” under section 300. (*In re Isabella F.* (2014) 226 Cal.App.4th 128, 138.) However, “previous acts of neglect, standing alone, do not establish a substantial risk of harm; there must be some reason beyond mere speculation to believe they will reoccur. [Citations.]” (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 565 (*Ricardo L.*)).

Here, the previous acts of neglect did stand alone. Section 300, subdivision (a) requires a “a substantial risk of serious future injury,” while subdivision (j) requires “a substantial risk that the child will be abused or neglected.” Other than the sole fact of Ian’s previous injury, none of the evidence demonstrated that Emma was at risk at the time of the hearing. Indeed, all of the evidence presented was to the contrary.

The court found that Ian’s injuries were “all consistent with child abuse,” and DCFS cites this finding as a reason to sustain the ruling. However, this finding is not supported by the record on appeal. No documents relating to Ian’s DCFS case are

included in the record, but in Ian's final evaluation Dr. Arnold concluded that Ian's femur fracture "is most likely an accidental fracture that occurred in the manner described by father." Dr. Arnold wrote that Ian's older fracture "is *not* the type of classic metaphyseal fracture that is highly correlated with non-accidental trauma" (emphasis added). Ian's bruising was the only injury Dr. Arnold associated with non-accidental trauma, stating generally that "neck and trunk bruises in this age group are very likely to be the result of non-accidental trauma." However, there is no evidence in the record on appeal associating the bruising with fists or any other intentional abuse.

Even if parents were negligent for failing to obtain medical care for Ian's first fracture and bruises, nothing in the record suggests that they were inclined to repeat the same mistakes with Emma. To the contrary, both parents acknowledged that Ian's injuries could have been prevented had they paid closer attention to his safety at the time. Parents' poor judgment with respect to Ian's safety and medical care is certainly concerning, and we do not intend to minimize it. However, parents' treatment of Ian a year before Emma was born is not a sufficient basis to find that there was a substantial risk that Emma would suffer abuse or neglect at the hands of her parents. To find jurisdiction where a parent demonstrates "lapses in judgment" before a child is born, "there had at a minimum to be some evidence that [the parent] either habitually had them in the past and so was very likely to have them in the future or was likely to have them in the future for some other reason." (*In re B.T.*, *supra*, 193 Cal.App.4th at p. 693.) Here, all of the evidence was to the contrary.

When the DCFS social worker visited Emma at home with parents, she found the apartment clean, organized, and well-equipped for Emma's arrival. Mother and father were attentive to Emma, and helped each other. Emma was up to date on all of her medical needs. Because Ian's fractures occurred as a result of Ian falling off the bed two separate times, parents obtained a bassinet and a crib to ensure such accidents would not happen again. This indicates that parents recognized their role in contributing to Ian's very serious injuries, and took steps to ensure Emma's safety.

With respect to Emma specifically, every witness, educator, family member, friend, and social worker who observed parents with Emma consistently said that parents were attentive, caring, and gentle with Emma. Indeed, even DCFS did not feel that parents were a danger to their children. Ian had five-hour unmonitored visits with parents, and he had not begun overnight visits only because Emma's case was pending. Social worker Daisy Cruz, the only DCFS witness who had observed Emma and parents together, testified that she had no concerns about Emma being placed with parents.

Emma cites *Ricardo L.*, *supra*, 109 Cal.App.4th 552 in support of her argument that there was no basis for jurisdiction. There, Kings County Human Services Agency (the Agency) filed a petition under section 300, subdivision (j) alleging that a newborn, Ricardo Jr., was at risk because his siblings were dependents of the court. (*Id.* at p. 556.) The Court of Appeal noted, "[S]ubdivision (j) has two prongs: (1) that '[t]he child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e) or (i)'; and (2) 'there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions.'"

[Citation.]” (*Id.* at p. 566.) The court held that although evidence demonstrated the basis for jurisdiction over the older children, no evidence was submitted to show the factual basis for the jurisdictional findings as to the baby. The court stated, “[t]here is no evidence of what problems remained after [mother] and [father] received family reunification and maintenance services during the course of C.S. and S.L.’s dependency.” (*Id.* at p. 567.) The Agency offered some conclusory statements that the parents had not complied fully with court orders and did not complete unification services, but the court held that this was insufficient: “Absent specific facts of [father’s] and [mother’s] noncompliance or their failure to learn from the services provided, as well as the effect on the children of that noncompliance or failure to learn, however, we cannot presume that noncompliance or a failure to learn alone is sufficient to establish a substantial risk that Ricardo, Jr. will be abused or neglected.” (*Id.* at pp. 568-569.) The court concluded, “The record that we are presented with simply does not provide sufficient evidence from which we can infer that there was a substantial risk Ricardo, Jr. would be abused or neglected,” and reversed the jurisdictional order. (*Id.* at p. 569.)

Here, similarly, there is no evidence that parents demonstrated problems following the reunification services they received relating to Ian. Indeed, both mother’s and father’s therapists said they met their treatment goals and did not need further therapy. They had completed the 12-week parenting class. They were currently enrolled in a mommy-and-me course relevant to Ian’s age group. Every witness who spoke about parents’ treatment of Emma, including the only DCFS witness who had seen them interact with Emma, stated that they had no

concerns about mother and father parenting Emma. Parents had long, unmonitored visits with Ian with no problems. This case is unlike *In re S. O.* (2002) 103 Cal.App.4th 453, for example, where jurisdiction was appropriate after the mother indicated that the only reason she enforced supervised visits with the boyfriend was due to court involvement and “progress on her case plans in the other dependencies had been very slow and she had yet to reunify with her older children.” (*Id.* at p. 462.) Here, parents did everything required in their case plan and exhibited no behavior that suggested Emma was at risk.

“We have no doubt that providing services to assist [Emma’s family] was meant to promote the best interests of [Emma] and her entire family, but these good intentions are an insufficient basis upon which to find jurisdiction under section 300” (*In re Isabella F.*, *supra*, 226 Cal.App.4th at p. 139.) In the absence of substantial evidence indicating that Emma was at risk of injury or neglect, jurisdiction under both subdivision (a) and subdivision (j) was inappropriate.

In light of our determination that the jurisdictional order must be reversed, the dispositional order must be reversed as well. (See *In re Precious D.* (2010) 189 Cal.App.4th 1251, 1261.)

DISPOSITION

The court’s jurisdictional and dispositional orders are reversed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.